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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 567

HARRY M. VEIX,

Appellant,

vs.

SIXTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

BRIEF ON BEHALF OF THE UNITED STATES SAVINGS AND LOAN LEAGUE AS AMICUS CURIAE.

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THE BLAKELY-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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IN THE

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OCTOBER TERM, 1939.

No. 567.

HARRY M. VEIX,

Appellant,

vs.

SIXTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The undersigned moves for permission to file in this cause the following brief as *Amicus Curiae* in behalf of the United States Savings and Loan League.

The controlling question involved in this case is whether the Legislature of the State of New Jersey may, in the exercise of its police power, make reasonable changes in the withdrawal rights of shareholders in State-chartered building and loan associations; and whether Chapter 102, Laws of 1932 is a reasonable exercise of such powers. The New Jersey Court of Errors and Appeals has so held and

the appellant in this cause has brought the case to this Court for review.

The United States Savings and Loan Leagues, in whose behalf this brief is filed, is a National organization whose membership is composed of the State Leagues of forty-eight States and Hawaii and individual building and loan and savings and loan associations.

The withdrawal right and its proper limitation are of the essence of the relationship between these associations and their shareholders. A decision by this Court on the questions presented in the above case will vitally affect the interests of building and loan and savings and loan associations located in at least twenty states, which enacted statutes regulating withdrawals from such associations, during the depression years of 1931 to 1935, as well as the business of all associations and their shareholders to some extent.

Due to the fact that this case, when decided, will have such a far reaching effect on building and loan and savings and loan associations and the withdrawal rights of shareholders in such associations, the United States Savings and Loan League wishes to present its views in connection with the determination of the issues involved. The undersigned therefore requests that the Court permit him to file the following brief as *Amicus Curiae* in the above entitled matter.

The attorneys for the appellant and the appellee have consented in writing to the filing of a brief by the undersigned.

.....

Attorney at Law.

January ....., 1940.

Consent of Attorneys for Appellant and Appellee to the Filing of Brief as Amicus Curiae.

We consent to the making of the above motion and the entering of the following order.

.....

Attorney for Appellant.

.....

Attorney for Appellee.

....., 1940.

Order Granting Motion to File Brief as Amicus Curiae.

The foregoing motion is allowed and it is ordered that the brief be filed.

.....

....., 1940.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1939.

No. 567.

HARRY M. VEIX,

Appellant,

vs.

SIXTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

BRIEF ON BEHALF OF THE UNITED STATES SAVINGS AND LOAN LEAGUE AS AMICUS CURIAE.

STATEMENT.

The appellant attacks Chapter 102, New Jersey Laws 1932, on the ground of impairment of contract and deprivation of property without due process of law. The chapter under attack changes the time and method of payment of withdrawals in New Jersey associations and prohibits suits from being brought as long as an association follows the prescribed procedure.

This brief, filed on behalf of the United States Savings and Loan League, is presented because the withdrawal right and its proper limitation are of the essence of the relationship between these associations and their shareholders, and because a determination of the question here under consideration will affect the interests of building and loan and savings and loan associations located in at least twenty States, which enacted statutes regulating withdrawals from such associations during the depression years of 1931 to 1935 in order to prevent the utter collapse of these associations.

See *Alabama:* Act of 1927, pages 431-432—1928 Code, Sec. 7097; New Code P. L. 1931, 1932 amendment of the Code, pages 232-233, Section 7111(33); Laws of 1932, Act No. 119, approved October 22, 1932; *California:* G. L. 1931, Act. 986, p. 457 (New Code); Laws 1933, C. 4; *Colorado:* P. L. 1933, Chap. 47, p. 284, Article V, Sec. 5; *Florida:* P. L. 1931, Chap. 15606 (No. 5), page 1050; P. L. 1933, Chap. 15908 (No. 51), page 111; *Illinois:* Laws 1931-1932 First Sp. Sess., p. 28; Laws 1933, p. 304; Laws 1935, p. 570; *Iowa:* Laws 1933, C. 165; *Kentucky:* Laws 1934, C. 18; *Louisiana:* Laws 1932, Act 140; *Massachusetts:* G. L. 1932, C. 170, Sec. 16, p. 2240; Laws 1933, C. 144, Sec. 17, p. 178; *Michigan:* L. 1931, Act 135; L. 1932, Act 20, p. 35, Sec. 6; Laws 1933, Act 120, p. 164; Laws 1933, extra session, Act 14, p. 40; *Nevada:* Laws 1931, C. 51; New Code—Section 12; L. 1933, C. 68; *New York:* Laws 1933, C. 325; *North Carolina:* L. 1933, C. 122, p. 93; *North Dakota:* Laws 1931, C. 94, New Code, Sec. 8; Laws 1933, C. 78, p. 109; *Ohio:* Laws 1934, S. 1, 3d, s. ses., Baldwin's 1934 Revision of Throckmorton's Annotated Code of Ohio, Sec. 9651, p. 1098; *Oklahoma:* St. 1931, C. 46, Art. 8, Sec. 9800; Laws 1933, C. 54; *Tennessee:* Laws 1933, C. 19, Sec. 7; *Texas:* Laws 1932, C. 18, 42nd Legislature, 3d called Session, p. 41; *Washington:* Laws 1933,

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In addition, substantial changes were also made during the depression period in the laws of fourteen other States. See *Arizona:* P. L. 1931, C. 40, p. 82; *Connecticut:* L. 1933, C. 210; *Illinois:* 1933, Smith & Hurd Rev. Statutes, p. 786-7, Sec. 225; *Maine:* L. 1933, C. 30; *Maryland:* L. 1933, C. 47, p. 99; *New Mexico:* L. 1931, C. 147, L. 1933, C. 78; *Missouri:* 1931, Revised St., C. 35, p 141; L. 1933, p. 182, at 184, Sec. 5593; *Montana:* L. 1933, C. 11; *Oregon:* L. 1931, C. 373; L. 1933, C. 328; *Pennsylvania:* L. 1933, C. 108; L. 1933, C. 114; *Rhode Island:* L. 1931, C. 1796; *South Carolina:* L. 1933, Act 622, p. 1176; *Utah:* 1933, C. 7; *Virginia:* L. 1932, C. 102, p. 94; *Wisconsin:* L. 1931, C. 70; L. 1933, C. 372.

For a statement of the essential facts, the Court is respectfully referred to the Statement contained in the briefs of the appellant and the appellee.

Opinion Below.

The opinion of the New Jersey Court of Errors and Appeals in this case is reported at 123 N. J. L. 356.

Statutes Involved.

Section 52 of "an Act concerning building and loan associations, revision of 1925," being Pamph. L. 1925, c. 65; Comp. St. Supp. 1930, Sec. 27—R. (52) provided as follows:

> "52. *Payment of withdrawals.* Withdrawals from any such association shall be paid in the order in which the notices thereof shall have been received, but not more than one-half of the receipts of any one month shall be required to be used for the payment of withdrawal claims, without the consent of the board of directors, until the oldest of such claims then un-

paid shall have been on file for a period of six months; but in no case shall payment be postponed for a period longer than six months from the date of such notice, and any member who has given the said notice may sue for and recover the withdrawal value of his shares in any such association in any court of competent jurisdiction, if the same is not paid in six months from the date of the giving of said notice of withdrawal."

Section 52 of "an Act concerning building and loan associations, revision of 1925," as amended by Pamph. L. 1932, c. 102; N. J. St. Annual 1932, Sec. 27—R. (52), effective April 22, 1932, provides as follows:

"52. *Payment of withdrawals.* Withdrawals from any such association shall be paid in the order in which the notices thereof shall have been received, but not more than one-half of the total receipts of any such association in any month, as income on investments authorized by section twenty-six hereof, dues on shares pledged with such association to secure loans authorized by paragraphs II and V of section twenty-six hereof and repayment of loans authorized by paragraphs II and V of section twenty-six hereof shall be required to be used for the payment of withdrawals without the consent of the board of directors; provided, however, that if, in any one month the funds of the association required to be available for the payment of withdrawals together with any other funds made available for such purpose by its board of directors, are at any time insufficient for the payment of all withdrawals which have been requested, then the right of any withdrawing member to priority of payment of the withdrawal value of his shares in the aforesaid order shall be only to the extent of five hundred dollars in any one month and if all withdrawing members have received payments in full or on account of their withdrawals to the extent of five hundred dollars in any one month and there is then a balance of such funds available for the payment of withdrawals then said order of priority of payment, to the extent of five hundred dollars shall continue to apply until such balance is exhausted; and no withdrawals shall be paid if the

funds available for the payment of matured shares are insufficient to pay all matured shares, the payment of which has been requested within thirty days after maturity, and members who have thus requested payment of their matured shares shall have a right to such payment prior to the rights of members who have requested payment of the withdrawal value of their shares. A member who has filed a notice or request for withdrawal shall not have the right to sue any such association to recover the withdrawal value of his shares or such part thereof as may not be paid, so long as the funds in the treasury of such association are applied as required herein."

Question Presented.

The controlling question involved in this case is whether the Legislature of the State of New Jersey may, in the exercise of its police power, make reasonable changes in withdrawal rights of shareholders in State-chartered building and loan associations; and whether Chapter 102, Laws of 1932, which restricts payment of withdrawals in New Jersey associations and prohibits suits from being brought to recover the withdrawal value of shares as long as an association follows the prescribed procedure, is a reasonable exercise of such power. The New Jersey Court of Errors and Appeals has so held and the appellant in this cause has brought the case to this Court for review.

Appellant's contentions are (1) that the provisions of the above Act impaired the obligation of an existing share contract between the appellant and the appellees in violation of Article 1, Section 10 of the Constitution of the United States; deprived the appellant of his property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States; and denied to the appellant the equal protection of the laws in violation of Section 1 of the Fourteenth

Amendment to the Constitution of the United States; (2) that the Act is therefore unconstitutional and void; and (3) that the New Jersey Court of Errors and Appeals therefore erred in confirming the judgment of the New Jersey Supreme Court which enforced the provisions of said Act.

The Court of Errors and Appeals of New Jersey based its decision in this case on the reasoning in the cases of *Bucsi* v. *Longworth Building and Loan Association,* 119 N. J. L. 120, 194 A. 857 (1937), and *Rocker* v. *Cardinal Building and Loan Association,* 13 N. J. Misc. 397, 197 A. 667, Aff'd. 119 N. J. L. 134, 194 A. 865, in which it had held that the 1932 legislation was a proper exercise of the paramount police power of the State and that, in the supervision and control of these institutions, the State cannot be stayed by the claims of individual shareholders that their preexisting rights and relationships in these associations will be incidentally affected and modified. Those cases present a notable statement of legal principles for which the United States Savings and Loan League has contended for many years.

ARGUMENT.

POINT I.

Building and Loan Associations, Like Banks and Insurance Companies, Are Quasi-Public Corporations Affected With a Public Interest and Are Subject to the Police Power. Building and Loan Associations, Being Subject to the Police Power, May Be Reasonably Regulated and Controlled by Legislative Action.

Building and loan and savings and loan associations are local, mutual, cooperative institutions organized for the purpose of inculcating the habits of thrift and aiding in the financing of home purchase and construction on the part of their members. Thompson, Building Associations, Secs. 23, 314 (2d ed. 1899); Thornton & Blackledge, Building Associations, Sec. 122 (2d ed. 1899). Because of their importance in developing habits of thrift and in increasing home ownership as well as building developments, these associations have been recognized as quasi-public in character and subject to greater Governmental supervision and control than ordinary private corporations.

The public character of these institutions was emphasized in a recent decision of this Court, *Hopkins Federal Savings and Loan Association* v. *Cleary*, 296 U. S. 315 (1935). In that case, Mr. Justice Cardozo, in holding invalid an Act of Congress which provided for the conversion of State-chartered building and loan associations into Federal savings and loan associations, said, *inter alia*, with respect to associations chartered by the State:

> "They are *quasi-public corporations*, chartered to encourage thrift and promote ownership of homes, with powers and immunities peculiarly their own. • • • They are more than business corporations.

> They have been organized and nutured as *quasi-public* instruments. * * * In its capacity of quasi-sovereign, the State repulses an assault upon the *quasi-public institutions* that are the products and embodiment of its statutes and its policies. * * * In the creation of corporations of this *quasi-public order* and in keeping them thereafter within the limits of their charters, the State is *parens patriae*, acting in a spirit of benevolence for the welfare of its citizens. * * * A corporation is a juristic person organized by government to accomplish certain ends, which may be public or quasi-public, though for other purposes of classification the corporation is described as private, *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 666-672. Cf. the statutes and decisions collected by Brandeis, J. in *Liggett Co.* v. *Lee*, 288 U. S. 517, 548, *et seq.* This is true of building and loan associations in Wisconsin and in other States. They have been given corporate capacity in the belief that their creation will advance the common weal. The State, which brings them into being, has an interest in preserving their existence, for only thus can they attain the ends of their creation. They are more than business corporations. They have been organized and nurtured as *quasi-public instruments.* * * * *How they shall be formed, how maintained and supervised, and how and when dissolved are matters of governmental policy.*" (Italics supplied.)

In *Louisville Gas and Electric Co.* v. *Coleman*, 277 U. S. 32 (1928), the United States Supreme Court, in holding valid, under the equal protection clause of the Constitution, a statutory provision which exempted building and loan associations from the operation of a Kentucky revenue act because of the quasi-public purposes which they served, said, at page 40:

> "It is made clear by the lower court that the purpose of the exemption was to enable these associations, by relieving them of a burden, more completely to carry out the *quasi-public* purpose which the Legislature designed in providing for their creation." (Italics supplied.)

In *United States* v. *Cambridge Loan and Building Com-*

pany, 278 U. S. 55 (1928), the Supreme Court held in effect that building and loan associations did not lose their quasi-public character and right on that ground to be exempt from Federal corporate income taxation by reason of their acceptance of deposits from those not shareholders and their making loans to shareholders who had not subscribed for shares in an amount equivalent to the amount of their loan.

In *Union Savings and Investment Company* v. *Salt Lake County*, 44 Utah 397, 140 P. 221 (1914), the Court pointed out, in determining the point at issue, that, in view of the purpose of building and loan associations to enable a large number of persons who are without ready means to build homes, and the benefit to the community derived from such associations, the State had the right, under its police power, to exercise rights of inspection and supervision over such associations greater than over ordinary business corporations. See also *Prudential Bldg. & Loan Ass'n* v. *Shaw*, 119 Tex. 228, 26 S. W. (2d) 168 (1930); *State ex rel. Crabbe, Atty. Gen.* v. *Massillon Savings and Loan Co.*, 110 Ohio St. 320, 143 N. E. 894 (1924); *Mutual Building and Savings Association* v. *Wilkinson*, 8 F. (2d) 183, Affirmed 13 F. (2d) 997, 998 (1926); *First National Bank* v. *County of Dawson*, 66 Mont. 321, 213 P. 1097 (1923). Cf. *Miller* v. *Prudential Banking and Trust Co.*, 63 W. Va. 107, 110, 59 S. E. 977 (1907); *Bibbs County Loan Association* v. *Richards*, 21 Ga. 592, 595, 596.

Since it is clear from the above authorities that building and loan associations are quasi-public corporations affected with a public interest and are therefore subject to the police power, they may be reasonably regulated and controlled by legislative action.

Point II.

The Relationship Between Building and Loan Associations and Their Members Is Entered Into Subject to the Future Exercise of the Police Power of the State by the Enactment of Reasonable Laws for the Common Good.

Although it is true that paragraph 1, Section 10, Article I of the United States Constitution provides that, "No State shall * * * pass any * * * law impairing the obligation of contracts," this constitutional provision does not prevent a reasonable exercise of the police power of a State, *i. e.*, its power to legislate for the protection of the public health, public safety and public welfare. An able discussion of this general principle is contained in *Constitution of the United States of America* (United States Government Printing Office: 1938), as follows:

> "All contracts are inherently subject to the paramount power of the sovereign, and the exercise of such power is never understood to involve their violation. *Osborn* v. *Nicholson*, 13 Wall. 654 (1872). See also *Stone* v. *Mississippi ex rel. Harris*, 101 U. S. 814 (1880); *Boston Beer Co.* v. *Massachusetts*, 97 U. S. 25 (1878). It does not matter that legislation appropriate to a legitimate end has the result of modifying or abrogating contracts already in effect, as contracts are to be regarded as having been made subject to the future exercise of constitutional power; the reservation of essential attributes of sovereign power is read into contracts as a postulate of the legal order. *Home Bldg. & Loan Assn.* v. *Blaisdell*, 290 U. S. 398 (1934). Parties entering into contracts do not estop the Legislature from enacting laws intended for the promotion of the common weal, or necessary for the general public good, even though contracts previously entered into between individuals may thereby be affected. *Manigault* v. *Springs*, 199 U. S. 473 (1905). * * * *Henderson Co.* v. *Thompson, et al.*, 300 U. S. 258 (1937).
>
> "Contracts made in the conduct of a business that is subject to regulation are also subject to such regulation. *Rast* v. *Van Deman & L. Co.*, 240 U. S. 342

(1916). For example, an act regulating dental advertising, where such regulation is a reasonable exercise of the protective power of the State, is valid even though it interferes with certain existing contracts for display signs and press notices. *Semler* v. *Oregon State Board of Dental Examiners*, 294 U. S. 608 (1935). And, an insurance company is subject to reasonable regulations prescribed by the Legislature, provided such regulations do not materially interfere with the substantial enjoyment of privileges granted by the State and serve only to secure the ends for which the corporation was created. *Chicago L. Ins. Co.* v. *Needles*, 113 U. S. 574, 580 (1885). Similarly a State may establish such reasonable and general regulations of banks as may be essential to public safety, and enforce them through a board supported by moderate assessments against the bank, despite the fact that the charter of the bank had confided the control of the bank's business to its stockholders. *Bank of Oxford* v. *Love*, 250 U. S. 603 (1919). An inheritance tax statute which requires the sealing of safe deposit boxes for at least 10 days after the death of the renter and requires the deposit company to retain assets found therein sufficient to pay the tax due the State does not impair the company's charter power to do a safe deposit business. *National Safe Deposit Co.* v. *Stead*, 232 U. S. 58 (1914).

• • •

"The economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with existing contracts. A reasonable and valid exercise of a State's reserved power to protect the vital interests of the public during an economic emergency does not violate the contract clause of the Constitution. *Home Bldg. & Loan Assoc.* v. *Blaisdell*, 290 U. S. 398 (1934); *New York & N. E. R. Co.* v. *Bristol*, 151 U. S. 556, 567 (1894). Similarly, emergency legislation relieving tenants from oppressive rental agreements is not invalid as an impairment of the obligation of contracts entered into under economic duress. *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242 (1922)."

The most authoritative recent decision dealing with the power of the State to pass laws under its police power which

indirectly impair or regulate existing contracts or the remedy by which they are enforced is, of course, *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398 (1933), which held valid a Minnesota statute extending the time allowed by existing law for redeeming real property from foreclosure and sale under existing mortgages. More will be said later about the analogy that can be drawn between the facts in that case and the present one.

One of the leading cases on this general subject, of course, is *Louisville and Nashville* v. *Mottley*, 219 U. S. 467 (1910), in which this Court dealt with the analogous subject as to whether an Act of Congress, otherwise constitutional, was unconstitutional under the Fifth Amendment as a taking of private property without compensation, because it invalidates contracts between individuals which conflict with the public policy declared in the Act. In that case, the Court held that a contract valid when made (in 1871) for the giving of a free pass by an interstate carrier, in consideration of a release of a claim for damages, could not be enforced after Congress had passed the Act of June 29, 1906, which prohibited carriers from charging a different rate from that specified in their published tariffs. The Court said:

> "It may be suggested that a refusal to enforce the agreement of 1871 will operate as a great hardship upon the defendants in error. But that consideration cannot control the determination of this controversy. * * * The Court cannot mold a statute to meet its views of justice in a particular case. * * * It is said, however, that, as the contract of Mottley and wife was originally valid, it cannot be supposed that Congress intended by the Act of 1906 to annul or prevent its performance. * * * Assuming that the agreement of 1871 was valid when made, could Congress, by any statute subsequently enacted, make its enforcement by suit impossible? * * * Contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a

contract can extend to the defeat of legitimate government authority. These principles control the decision of the present question. The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power * * * as to render that agreement unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations is inconceivable. * * * There can, in the nature of things, be no vested right in an existing law which precludes its change or repeal, nor vested right in the omission to legislate upon a particular subject-matter which exempts a contract from the effect of subsequent legislation upon its subject-matter by competent legislative authority. * * * If the Legislature had no power to alter its police laws when contracts would be affected, then the most important and valuable reforms might be precluded by the simple device of entering into contracts for the purpose. No doctrine to that effect would be even plausible, much less sound and tenable."

In line with the above statement of the law and in line with the foregoing Court decisions, it has been the settled law of this country for many years that State Legislatures may enact statutes regulating banks, building and loan associations and insurance companies, in the interest of the public and of the general welfare of the State, although incidentally the private rights of said associations and of their members must be correspondingly altered and modified.

Such changes are in no manner a violation of the constitutional rights of the members, for the reason that, as pointed out above, the exercise of the police power, within its proper sphere, cannot be impeded by constitutional guarantees. When the Legislature has undertaken to regulate a business affected with a public interest, this exercise by the State of its basic police power in the interest of the

common weal cannot be arrested by the claim of individual contract or property rights. This basic principle of constitutional law, which is trite in respect to banks, public utilities, carriers and insurance companies, equally applies to building and loan associations, which are to an equal extent quasi-public institutions.

When private individuals acquire rights, by contract or otherwise, in such quasi-public institutions, subject to legislative regulation and control, such individuals cannot claim any constitutional privileges against the impairment of their relationships or their contracts by the subsequent enactment of regulatory legislation affecting such institutions through the proper exercise of the police power. This doctrine is inevitable and inherent in the nature of these institutions and necessarily results from their character. For it cannot be denied that, if their contracts or shareholder relationships were free from control or interference by the Legislature, the entire business could be put beyond the control of government regulation, by the simple expedient of making creditor or shareholder contracts.

In the case of *Holland* v. *Nakdimen*, 177 Ark. 920, 9 S. W. 2d 307 (1928), the Court held that a statute prescribing a maximum rate of interest to be allowed on deposits was a proper exercise of the power to regulate banks operating in that State. The decision points out that this statute not only operated to control the interest paid on future deposits, but applied to a previously existing contract by which a bank agreed to allow a higher rate of interest to one of its depositors. The Court said:

> "Finally, it is insisted that the act under consideration went into effect March 7, 1927, and that in so far as the plaintiff, Mrs. C. C. Scott, is concerned, it would violate a contract which the bank had previously made with her to pay her 4½ per cent on time deposits until June 30, 1927. When Mrs. Scott and the bank made this contract, they knew that the regulation and con-

trol of banks came under the internal police power of the State, and that this contract must be subject to all laws then in force or which might thereafter be passed."

Such a decision is direct authority for the proposition that no shareholder in a building and loan association can complain of a statute, enacted under the police power of the State, which affects his rights by providing for a new system of withdrawals from such association.

In *Dillingham* v. *McLaughlin*, 264 U. S. 370 (1923), some individuals, who operated as a common law trust, conducted a home building, thrift and savings business. They had received deposits under certificates which constituted valid and legal contracts under the laws of the State of New York. By a subsequent enactment, the Legislature provided that such businesses should be incorporated and classified with banks and building and loan associations, and should be subjected to the regulations applicable to such businesses. The individuals who operated the trust brought suit to restrain the enforcement of the Act. On appeal, this Court specifically held that the new enactment was not only valid but would apply to all existing contracts in the existing business, since the new statute was an exercise by the Legislature of the police power in a field undoubtedly within its proper sphere. As to the existing contracts, the Court said:

> "The operation of reasonable laws for the protection of the public cannot be headed off by making contracts reaching into the future."

An important case, in one of the most important building and loan states, was recently decided by the Supreme Court of Ohio. The Massillon Building and Loan Association had made a contract, under which it had given to certain brokers the exclusive right to sell to the public twenty thousand shares of the capital stock of said Association.

The contract was an important one, involving more than Eighty Thousand Dollars in potenital profit to the brokers. The contract was entirely beneficial to the Association also, which collected on each sale a net amount in excess of the par value of its shares. The contract, when made, was, in every respect, legal and binding under the laws of the State of Ohio.

The Banking Commissioner of Ohio, however, did not approve the policy underlying the sales of shares made under this contract. There was, however, no law to which resort could be had in order to prevent the association and the brokers from going on with the execution of this contract. As a matter of fact, the contract had been to a substantial extent already executed, and, in every sense of the word, contract and property rights had vested in the parties, subject to the protection of all State and Federal constitutional guarantees.

At the suggestion and on the recommendation of the Banking Commissioner, the Legislature of Ohio enacted a law providing that all building and loan shares must be sold, by the associations respectively, directly to the public and "over the counter." This statute, in terms, was made retroactive, and all existing agreements in derogation thereof were declared to be illegal and null under the reserve police power and the right of the State of Ohio to control the operations and relationships of its building and loan associations. An excerpt from that decision, *State ex rel. Crabbe, Atty. Gen.* v. *Massillon Savings & Loan Co.*, 110 Ohio St. 320, 143 N. E. 894 (1924), reads:

> " 'By virtue of its police power, the State may regulate building and loan associations. * * * In the exercise of this power, various statutes have been passed relating, among other things, to the incorporation of such societies, to their powers.' etc., 9 Corpus Juris, 923. In this case the State seeks to oust the building and loan company from its claimed right or

franchise to sell its stock and memberships in contravention of the statute, after July 3, 1923. It is not our purpose to decide what the effect of this contract may be as between the parties themselves, especially as it has been suggested in argument that this feature has been adjudicated in another case. We are not advised by the record to what extent the contract between the building and loan company and the finance company had been executed by actual sales of stock and memberships prior to the filing of this petition in *quo warranto*. The petition merely asks for an ouster in the future from the claimed privilege of selling the same in accordance with the agreement. Therefore it is manifest that, while the petition attacks the contract entered into prior to the effective date of the amended act, and asks the judgment of ouster from further proceedings under that contract, it is not sought to impair a completed contractual obligation, but to curtail a subsequent exercise of a franchise by preventing future sales. Undoubtedly this association itself could not enter into such a contract after July 2, 1923, and, in our opinion, it cannot foreclose the right of the State to exercise thereafter its police power by entering into such contract prior to the date of the amended act."

Since building and loan associations are subject to regulation under the police power, their creditor—and shareholder—relationships are subject to reasonable control, as otherwise all power of State regulation and control would be frustrated by any pre-existing contracts, outstanding stock certificates, or other current undertakings, of said institutions. It is for that reason that the cases hold uniformly that the power of regulation or control over these institutions cannot be arrested or weakened or limited by the pre-existing contracts or shareholder relationships of these quasi-public corporations.

Accordingly, persons who make contracts with, or who subscribe to shares in building and loan associations are charged in advance with knowledge of the character of these institutions and of the regulatory rights of the Legislature

in their behalf, and such shareholders cannot validly complain when the Legislature at a later date exercises its right of reasonable control and regulation over them and effects structural and other changes which affect the pre-existing prerogatives and rights of these shareholders and members.

Point III.

The Changes in the Withdrawal Rights of Shareholders Made by Act 102 of the Laws of 1932 Constitute a Reasonable and Proper Exercise of the Police Power. Such Changes Are Not Discriminatory, Arbitrary or Capricious, But Bear a Reasonable Relation to a Legitimate End.

An analysis of the changes made by the amendment of 1932 discloses the following:

1. That prior to the amendment it was provided that withdrawals should be paid in the order in which the notices therefor were received; the amendment makes the same provision as to priority, but limits priority rights to payment out of funds allocated by the statute for that purpose.

2. That prior to the amendment, not more than one-half the receipts in any one month could be required to be used for payment of withdrawals without the consent of the board of directors until the oldest had been on file for six months, and thereafter all receipts were required to be used. Under the amendment, the funds required to be used for the payment of withdrawals are limited to one-half of the receipts in any month on income on investments authorized by Section 26 of the Act (Comp. St. Supp. Sec. 27-R. (26)), plus dues on shares pledged to secure loans, authorized by paragraphs II and V of said section, plus payment of loans authorized by said paragraph and section. The right of the board of directors to use receipts in excess of those required to be used for the payment of withdrawals still continues.

3. That prior to the amendment, Section 52 made no reference to matured shares, while the amendment provides that withdrawals shall not be paid if the funds

available for the payment of matured shares are insufficient to pay all matured shares, the payment of which has been requested within prescribed times.

4. That prior to the amendment the act gave a right of action to a withdrawing member whose withdrawal was not paid within six months while the amendment prohibits a suit so long as the funds in the treasury of the association are applied as required by the statute.

The New Jersey Court of Errors and Appeals, in upholding the validity of these changes made by Act 102 in the instant case, which is reported at 123 N. J. L. 356, based its decision on the reasoning which it had previously followed in the cases of *Bucsi* v. *Longworth Building and Loan Association*, 119 N. J. L. 120, 194 A. 857 (1937) and *Rocker* v. *Cardinal Building and Loan Association of Newark*, 13 N. J. Misc. 397, 197 A. 667, Aff'd. 119 N. J. L. 134, 194 A. 865 (1937). There it had held that the 1932 legislation was a proper exercise of the paramount police power of the State in view of the public policy necessitating protection of associations from insolvency during the depression, and that, in the supervision and control of these institutions, the State could not be stayed by the claims of individual shareholders that their preexisting rights and relationships in these associations would be incidentally affected and modified. In the former of the latter two decisions, the Court pointed out the economic conditions which led to the enactment of Act 102, as follows:

> "It is a matter of common knowledge that a large percentage of all persons in this State over the age of twenty-one are members of building and loan associations and that assets and holdings of building and loan associations approximate, if they do not exceed, $1,000,000,000.
>
> "This Court must judicially notice the fact that investments of building and loan associations are regulated by statute and confined to classes of investment which are also by statute legal investments for banks, trust companies, insurance companies, and trustees,

particularly first mortgages on real estate located in New Jersey. The Court also judicially notices the fact that the associations have foreclosed thousands of these mortgages and bought in the property at the public sale, and that the value of these mortgages runs into hundreds of millions of dollars. The Court also judicially notices the enactment by the Congress of the United States of the Home Owners' Loan Act on June 13, 1933, c. 64, art. 1, Sec. 4, 48 Stat. 128, 129, as amended, title 12, Sec. 1463, U. S. C. A., and it is also common knowledge that thousands of mortgagors who were in default to the associations availed themselves of the benefit of this statute.

"When the Legislature in 1903 gave to withdrawing shareholders the unqualified privilege of suit, it did not foresee the economic collapse through which this country has labored for the last eight years, with the consequent credit stringency, loss of employment, and collapse of price levels. It is unnecessary to cite official statistics to establish what is common knowledge throughout the length and breadth of the land. *West Coast Hotel Company* v. *Parrish*, 300 U. S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A. L. R. 1330. In the face of this financial stringency the number of withdrawals filed by shareholders of associations accelerated at a very rapid rate. It cannot be assumed that they were an exception to what was generally happening in all saving institutions.

"The liabilities of building and loan associations to other than shareholders ordinarily amounts to but a negligible percentage of its assets. * * * Hence, under the economic conditions existing in 1932, by exercising the unfettered privilege of withdrawal and the concomitant right of suit, a rapidly increasing number of withdrawing shareholders created a condition of potential insolvency in all the building and loan associations of this State.

"If the right of withdrawal was not regulated and all notices of withdrawals were reduced to judgment, these judgment liabilities, coupled with the fact that by foreclosing mortgages the building and loan associations had acquired title to thousands of unsalable properties in this State, the inevitable result would have been that most of the building and loan associations would eventually become insolvent under section 65 of

the Corporation Act (as amended, N. J. St. Annual 1931, Sec. 47-65), if we are to consider insolvency to consist of their inability to pay the rapidly gathering withdrawal demands without thereby impairing the assets available to others with like rights.

"The Legislatures of 1903 and 1925 were neither omniscient or prescient, and events proved to the Legislature of 1932 that the unfettered privilege of suit granted to withdrawing members compelled these associations to accede to the prior demands of those who made an early request for withdrawals which would completely undo the major purposes for which they were created. The 1932 Legislature faced the unenviable choice of permitting conditions to continue as they were with the inevitable result being the actual insolvency of most, if not all, of the associations, or it could regulate the rights of a withdrawing shareholder in a manner consonant with mutuality. It chose the latter and enacted the statute in question, P. L. 1932, c. 102 (N. J. St. Annual 1932, Sec. 27—R (52).

"The actual insolvency of these mutual corporations would have been fraught with a grave public danger. Our insolvency statute, section 65 of the Corporation Act, is essentially bankrupt in character, *Bloch* v. *Bell Furniture Co.*, 111 N. J. Eq. 551, 561, 162 A. 414, 84 A. L. R. 885, and the object of the proceedings under the act is to distribute the estate of the debtor corporation, *Stockton* v. *Mechanics' & Laborers' Savings Bank*, 32 N. J. Eq. 163, 168, 169, and the matured creditors have right to payment at once, *Usher* v. *Sarco Co., etc.*, 100 N. J. Eq. 428, 431, 136 A. 199. Building and loan associations are subject to the provisions of the Corporation Act, Sec. 4 (2 Comp. St. 1910, p. 1600, Sec. 4), by the Building and Loan Act of 1903, as amended and revised, 1 Comp. St. Supp. 1924, Sec. 27—4, p. 223; Comp. St. Supp. 1930, Sec. 27—R (4), p. 135; P. L. 1932, p. 171 (N. J. St. Annual 1932, Sec. 27—R (4). If any great number of them became insolvent, ruinous liquidation necessarily would follow because withdrawing members would be entitled to be paid at once out of the assets of such insolvent associations.

"Mere contemplation of such a situation forces the conclusion that there was a tremendous and grave public interest involved. As long as the privilege of suit

was unabridged, potential insolvency was present as to many and actual insolvency of most necessarily would follow as a matter of course.

"The liquidation of the assets of these associations having a value of approximately $1,000,000,000 would have destroyed the stability of and the market for first mortgages on real estate and other types of investments that are prescribed as legal investments by statute for banks, trust companies, insurance companies, and other institutions and fiduciaries and to which classes of legal investments the funds of building and loan associations are restricted by law.

"The value of real property and real estate mortgages was largely gone for the time being, and liquidation could only be had on ruinous terms, but these values were susceptible of ultimate return. The result would be chaos and even under orderly liquidation of this vast amount of assets the ultimate return of these values would be indefinitely postponed if not irreparably impaired. The State has an important interest in the maintenance of real estate values because these values form the major base upon which its tax structure and its various political subdivisions rests. The stability of the tax base over a term of years is vitally important to the State.

"The structure of the tax base and the widespread membership in building and loan associations, and the fact that the value of the real estate mortgages and real property owned by such associations represents a high percentage of the total value of all taxable real estate in the State, creates a situation which is peculiar to this State."

The Court therefore held that the statute, in both its prospective and retroactive effect, was constitutional as a valid exercise of the police power in view of the public policy necessitating protection of building and loan associations during the depression, even though the statute was not strictly emergency legislation. The Court also pointed out that the constitutional provision against impairing obligations of contracts did not prevent such an exercise of power as was used in this case, citing *Home Building and Loan Association* v. *Blaisdell, supra.*

For two other reported decisions upholding the validity of the above changes made by Act 102, and their retroactive effect, see *Fornataro* v. *Atlantic Coast Building and Loan Association*, 10 N. J. Misc. 1248, 163 A. 240; and *Horowitz* v. *Guaranty Building & Loan Ass'n of the City of Newark*, 17 N. J. Misc. 274, 8 A. (2d) 768.

The courts of New Jersey are not alone in upholding such withdrawal arrangements. For example, in *State ex rel. Wagner, Sup'r* v. *Farm and Home Savings and Loan Association of Missouri*, 90 S. W. (2d) 93 (Supreme Court of Missouri, 1936), it was held that a plan for the reorganization of a building and loan association was reasonable and not violative of a shareholder's constitutional right of contract even though it prohibited withdrawals by shareholders for one year after reorganization and provided for graduated withdrawal fees thereafter prior to maturity. The Court said:

> "The appellant contends the right of withdrawal is a vested right under the contract between them and the association, and that any change in the right to withdrawal against the stockholder was an impairment of the right of contract in violation of Section 15, art. 2, of the Constitution of Missouri. • • • The appellants contend that under the by-laws of the defendant association and section 5604, R. S. 1929 (Mo. St. Ann. Sec. 5604, p. 797), by giving thirty days' notice and with a penalty of 2 per cent., they would be entitled to withdraw their shares of stock; while under the plan of reorganization they could not withdraw their stock during the first year, and if they did during the second year they would lose 6 per cent.; 4 per cent. during the third year, and 2 per cent. thereafter.
>
> "There was testimony to the effect that this prohibition upon withdrawals for one year after reorganization and provision for graduated withdrawal fees thereafter prior to maturity was reasonable and necessary in order that the association could function normally. This was so for the reason that such charges were found necessary to prevent the filing of withdrawal notices in amounts that would prevent the

flow of new money into the association, and when it failed to receive new money through an increased membership it would become self-liquidating and fail to render the service for which it was established."

Point IV.

Act 102 Changes Only the Remedy or Procedure for Enforcing Contracts, and Not Substantive Rights Under the Contract. Courts Uniformly Hold That Changes in Remedy Do Not Impair Obligation of Contract.

It should also be pointed out that Act 102 only changes the remedy or procedure whereby withdrawals are accomplished and affects in no way the substantive rights under the share contract. In *Rocker* v. *Cardinal Building and Loan Ass'n. of Newark, supra,* the Court pointed out this attribute of the New Jersey statute, saying:

> "The 1932 amendment of Section 52 does not reduce the amount of plaintiff's monetary interest in the defendant association. It is true that it provides a different scheme for the payment of withdrawals than that provided by the section which it amends, but the statutory changes merely related to the time, and not the quantum, of payment. This being so, the said amendment may be upheld as a procedural statute and binding upon all members of building and loan associations instituting suits for withdrawal after its enactment."

In *Home Building and Loan Association* v. *Blaisdell, supra,* this Court pointed out the distinction which could be drawn between statutes under the police power which affected the obligation and those which affected the remedy of contracts. Mr. Chief Justice Hughes, in writing the opinion of the Court in that case, pointed out to some extent the history of this distinction as follows:

> "Chief Justice Marshall pointed out the distinction between obligation and remedy. *Sturges* v. *Crowninshield, supra,* p. 200. Said he: 'The distinction between the obligation of a contract, and the remedy given

by the Legislature to enforce that obligation, has been taken at the Bar, and exists in the nature of things. Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct.' And in *Von Hoffman* v. *City of Quincy, supra*, pp. 553, 554, the general statement above quoted was limited by the further observation that 'It is competent for the States to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate, and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances.' And Chief Justice White, quoting this language in *Antoni* v. *Greenhow*, 107 U. S. 769, 775, added: 'In all such cases the question becomes, therefore, one of reasonableness, and of that the Legislature is primarily the judge.'"

After examining these old cases, it was then indicated that the obligation of a contract is not impaired by a law modifying the remedy or procedure for its enforcement as long as substantive rights secured by the contract were not impaired.

Also see the long list of cases cited in footnote 13, on page 434 of the above opinion, which cases have sustained as valid legislative changes in the remedy or procedure for enforcing contracts.

Since Act 102 only changes the remedy or procedure whereby withdrawals are accomplished and affects in no way the substantive rights under the share contract, it would follow from the above cases which uphold such changes that Act 102 is valid.

Point V.

Facts and Law Involved in Treigle v. Acme Homestead Ass'n Case Are Distinguishable From Those in Present Case.

The decision in the case of *Treigle* v. *Acme Homestead Association*, 297 U. S. 189, 56 S. Ct. 408, 80 L. Ed. 575, 101 A. R. L. 1284 (1935), upon casual study, might appear to be controlling in the instant case. Upon more thorough study, however, the distinguishing facts and circumstances become apparent.

The facts of the *Treigle* case are as follows:

Prior to the adoption of Act No. 140 of 1932 by the Legislature of Louisiana, building and loan associations in that State were required, whenever the income ordinarily applicable to the demands of withdrawing members was insufficient to pay all such demands within sixty days from date of notice, to set apart fifty per cent. of the receipts of the association to pay such withdrawing members, and payments were to be made in the order of presentation of notices of withdrawal. Act No. 140 abolished this requirement, and the amount to be allocated to payment of withdrawing members was by that Act left to the sole discretion of the directors, who were authorized to apply the association's receipts to the making of loans, to payment of old or new debts, to dividends to continuing members, or to the creation of a cash reserve for future dividends. A stockholder who, prior to the adoption of the Act, gave notice of withdrawal, but whose demand had not been paid, although similar applications had been paid, challenged the validity of the Act under the Federal Constitution.

The Court held: (1) that the Act impaired the obligation of the stockholder's contract and destroyed his vested rights in violation of Sec. 10 of Article I, and Sec. 1 of the Fourteenth Amendment, of the Federal Constitu-

tion; (2) that the Act was not justifiable control or regulation in the public interest of the operations of building and loan associations and was not a valid exercise of the police power; (3) as the Act did not purport to deal with any existing emergency and the provisions respecting the rights of withdrawing members were neither temporary nor conditional, it could not be treated as an emergency measure; (4) that the challenged sections of the Act were neither intended nor adapted to conserve the assets of building and loan associations, but affected merely the rights of members *inter sese*, and in this respect were unreasonable and arbitrary interference with vested contract rights; (5) that, though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to that end and must not be arbitrary or oppressive.

In the first place, a distinction can be made in the facts of the *Treigle* case from those in the present case. In the *Treigle* case, the application for withdrawal was filed before the Louisiana amendment was enacted into law; whereas in the present case the application for withdrawal was filed after the New Jersey amendment was passed.

A contrast of the basic changes made by the two amendments in the laws of their respective States is sufficient to indicate how widely the law involved in the two cases differs. Whereas the old Louisiana law required a definite amount to be set aside to pay withdrawing shareholders, the Louisiana amendment left the payment of withdrawals to the sole discretion of the directors of an association and they were even authorized, if they saw fit, to apply all the receipts to other purposes than payment of withdrawals.

On the other hand, whereas the old New Jersey law gave an undue preference to those shareholders who first filed

withdrawal requests and thus provided a withdrawal procedure which would have wrecked every building and loan association in that State and rendered practically valueless the share contracts of all shareholders, the New Jersey amendment provided a definite, orderly plan of withdrawal that was equally fair to all shareholders. Its object was to prevent "runs" on building and loan associations by withdrawing shareholders in view of the then precarious financial conditions of such associations. It was passed to prevent the utter collapse and insolvency of building and loan associations.

In other words, whereas the Louisiana amendment changed the law from a definite, equitable basis to an indefinite, arbitrary and inequitable basis, dependent upon the will of the directors; the New Jersey amendment changed the law from an inequitable basis, which allowed a few shareholders to secure a preference, and which would have rendered insolvent every association in that State, to an equitable basis which was in line with the remaining provisions of the statute, and which contemplated the "central idea of cooperation, equality and mutuality among the members."

Mr. Justice Roberts, speaking for the Court in the *Treigle* case, said:

> "Though the obligations of contracts must yield to a proper exercise of the police power, *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, 78 L. Ed. [413] 415, 88 A. L. R. 1481, and vested rights cannot inhibit the proper exertion of [police] power, *Nebbia* v. *New York*, 291 U. S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A. L. R. 1469; it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive.
>
> "As we have pointed out, the questioned sections deal only with private rights and are not adapted to the legitimate end of conserving or equitably administering the assets in the interest of all the members.

> They deprive withdrawing members of a solvent association of existing contract rights, for the benefit of those who remain. We hold the challenged provisions impair the obligation of the appellant's contract and arbitrarily deprive him of vested property rights without due process of law."

The New Jersey Court of Errors and Appeals distinguished the New Jersey amendment from that of Louisiana, in *Bucsi* v. *Longworth Building and Loan Ass'n*, *supra*, by saying:

> "It may very well be that the statute in Louisiana was not passed 'for an end which is in fact public,' but the situation which faced our Legislature in 1932, if allowed to run unregulated to its apparent and ultimate economic conclusion, would have affected adversely every person in this State."

and then described the economic conditions in New Jersey as set forth above, at pp. 22 to 25.

The *Treigle* case can be reconciled with all of the other similar cases cited in this brief. The following reconciliation is set forth in the discussion relating to the right of a member in a building and loan association to withdraw in 12 C. J. S. Sec. 29, p. 437:

> "A member's right to withdraw is an absolute one which cannot be arbitrarily withheld, although it is subject to legislative changes made under a proper exercise of the State's police power [citing *State ex rel. Wagner v. Farm & Home Savings and Loan Ass'n. of Missouri*, 90 S. W. (2d) 93, 338 Mo. 313; *Bucsi* v. *Longworth Building and Loan Ass'n.*, 194 A. 857, 119 N. J. L. 120; *Rocker* v. *Cardinal Building and Loan Ass'n. of Newark*, 179 A. 667, 13 N. J. Misc. 397, affirmed 194 A. 865, 119 N. J. L. 134; *Formataro* v. *Atlantic Coast Building and Loan Ass'n.*, 163 A. 240, 10 N. J. Misc. 1248], particularly where such statutes relate merely to matters of procedure. [Citing *Rocker* v. *Cardinal Building and Loan Association of Newark*, 179 A. 667, 13 N. J. Misc. 397, affirmed 194 A. 865, 119 N. J. Law 134.] Legislation, however, which impairs the obligation of a withdrawing stockholder's contract and destroys his vested rights for no discernible public

purpose is unconstitutional. [Citing *Treigle* v. *Acme Homestead Association*, 56 S. Ct. 408, 297 U. S. 189, 80 L. Ed. 575, 101 A. L. R. 128-4, reversing 160 So. 637, 181 La. 941, 98 A. L. R. 69.]''

In view of the above distinctions that can be made both in the facts and the law in the *Treigle* case and this case, the decision in the former case is not viewed as a controlling precedent for the present case.

It is respectfully submitted, therefore, that the appeal of appellant be dismissed.

HORACE RUSSELL,
General Counsel.

DAVID A. BRIDEWELL,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 567.—October Term, 1939.

Harry M. Veix, Appellant,
vs.
Sixth Ward Building and Loan Association of Newark, New Jersey.

Appeal from the Supreme Court of the State of New Jersey.

[April 22, 1940.]

Mr. Justice Reed delivered the opinion of the Court.

In 1928 and 1929 appellant purchased prepaid shares of the appellee, a New Jersey building and loan association, paying the par value of $200 per share. At that time the applicable New Jersey statutes provided that shares in such an association could be withdrawn by giving such written notice as the constitution or by-laws of the association provided, not to exceed 30 days; that withdrawals should be paid in the order in which notices were received, with not more than one-half of the receipts of any month being required to be used for payment of withdrawals, without the consent of the board of directors, until the oldest unpaid claim of withdrawal had been on file for six months; that no payment should be postponed for longer than six months from the date of notice; and that any member who had given notice could sue and recover the withdrawal value if it was not paid within six months of the notice.[1]

On April 22, 1932, these statutes were amended in four respects: (1) "total receipts" of an association, one-half of which were required to be used for the payment of withdrawals and which had not been previously defined, were defined as income on authorized investments, dues on shares of the association which were pledged with it to secure loans, and repayments from loans; (2) if in any one month the funds required to be payable for withdrawals were insufficient to pay all requested withdrawals, withdrawing members were to receive $500 each in the order of priority until the fund for withdrawals was exhausted; (3) no withdrawals were to be paid if

[1] Laws of N. J., 1925, c. 65, § 52.

the funds available for payment of matured shares were insufficient to pay all matured shares, the payment of which had been requested within thirty days after maturity; (4) so long as the funds of an association were applied as required by the amendment, no member who had filed his withdrawal notice should have a right to sue for the withdrawal value of his shares.[2]

In 1935 another amendment was passed providing that one-third of the "net receipts" of an association were to be payable for withdrawals, with "net receipts" defined as monies, other than borrowed monies, received by the association less operating expenses, payments on creditor obligations, payments for protecting the property of the association and reserves for any of these purposes. At the same time payments of withdrawals in the order in which notices had been received was continued but the payments were limited to $50 per member.

Minor amendments, not pertinent here, were added in 1936 and in 1937 the statutes, as they stood in 1936 with some immaterial changes, were carried into a general revision of New Jersey's statute law.

On August 17, 1932, after the passage of the 1932 amendment, appellant filed a written notice of withdrawal with respondent. In 1939, he brought this suit against respondent for the withdrawal value of his shares, claiming that, in so far as any of the amendments referred to altered the statutes in existence at the time of purchase of the shares, the amendments were unconstitutional violations of the contracts clause of Article I and the due process clause of the Fourteenth Amendment. The allegations show that the Association was solvent at the time of notice of withdrawal and has remained solvent. The trial court dismissed appellant's complaint. The Court of Errors and Appeals affirmed.

The ruling was based squarely on the constitutionality of the Act of 1932. The later acts were not referred to in the opinion except by pointing out that the Act of 1932 would be found in the 1937 revision. The case is here on appeal under Section 237(a) of the Judicial Code. As this section gives a review to this Court only of state statutes held valid by the highest court of a state against an attack for repugnancy to the Constitution of the United States,

[2] Laws of N. J., 1932, c. 102.

we deem ourselves limited to the Act of 1932.[3] The question of the applicability to withdrawals of statutes on the subject which were passed subsequent to the notice of withdrawal is not considered in this opinion.[4]

The New Jersey statutes concerning the regulation of building and loan associations reach back many years prior to the purchase of these shares. Beginning in 1903 general regulatory acts were passed at intervals with sections directed at the mode of withdrawal.[5] The form of these statutes and the judicial notice by the Court of Errors and Appeals in the *Bucsi* case of the importance to the State of New Jersey of building and loan associations makes clear that in dealing in 1932 with the problem of withdrawals the legislature was faced with the threat of wrecked associations and the consequent further depression of real estate values throughout its area. While the act of 1932 now under review was not emergency legislation, the dangers of unrestricted withdrawals then became apparent. It was passed in the public interest to protect the activities of the associations for the economic welfare of the State. It is also plain that the 1932 act was one of a long series regulating the many integrated phases of the building and loan business such as formation, membership, powers, investments, reports, liquidations, foreign associations and examinations. We are dealing here with financial institutions of major importance to the credit system of the State.[6]

With institutions of such importance to its economy, the State retains police powers adequate to authorize the enactment of statutes regulating the withdrawal of shares.[7] Unquestionably for the future, the provisions of the 1932 act would be effective.[8] We think they were equally effective as to shares bought prior to the enactment of the statute, notwithstanding the provisions of Article

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[3] Cf. Bucsi *v.* Longworth B. & L. Assn., 119 N. J. L. 120, where the same court dealt with statutes enacted after notice of withdrawal.

[4] Cf. Carpenter *v.* Wabash Ry. Co., No. 230 this Term, decided January 29, 1940.

[5] Bucsi *v.* Longworth B. & L. Assn., 119 N. J. L. 120, 124; Laws of N. J., 1903, c. 218, § 38; Laws of N. J., 1925, c. 65, § 49; Laws of N. J., 1932, c. 102; Revised Statutes of N. J., 1937, 17:12-49, 12-53.

[6] Hopkins Savings Assn. *v.* Cleary, 296 U. S. 315, 328; cf. Piquet, Building & Loan Associations in New Jersey, cc. II, VI and X.

[7] Dillingham *v.* McLaughlin, 264 U. S. 370; Noble State Bank *v.* Haskell, 219 U. S. 104; Doty *v.* Love, 295 U. S. 64.

[8] Stockholders *v.* Sterling, 300 U. S. 175, and cases cited.

I, Section 10 of the Constitution that "No State shall . . . pass any . . . . Law impairing the obligation of contracts. . . ." This is so because the obligation of the Association to respond to the application for withdrawal was subject to the paramount police power. Beginning with the 1903 act the State of New Jersey has laid down specifically by statute the requirements for withdrawal. The charter, by-laws and membership certificate ceased to determine withdrawal rights. (See Note 5, *supra.*) It was while statutory requirements were in effect that petitioner purchased his shares. When he purchased into an enterprise already regulated in the particular to which he now objects, he purchased subject to further legislation upon the same topic.[9]

In *Home Building & Loan Association* v. *Blaisdell*[10] this Court considered the authority retained by the state over contracts "to safeguard the vital interests of its people." The rule that all contracts are made subject to this paramount authority was there reiterated. Such authority is not limited to health, morals and safety.[11] It extends to economic needs as well.[12] Utility rate contracts give way to this power,[13] as do contractual arrangements between landlords and tenants.[14]

The cases cited in the preceding paragraph make repeated reference to the emergency existing at the time of the enactment of the questioned statutes. Many of the enactments were temporary in character. We are here considering a permanent piece of legislation. So far as the contract clause is concerned, is this significant? We think not. "Emergency does not create [constitutional] power, emergency may furnish the occasion for the exercise of

[9] Rast v. VanDeman & Lewis, 240 U. S. 342, 363; Semler v. Dental Examiners, 294 U. S. 608, 610.

[10] 290 U. S. 398, 434 *et seq.*

[11] Stone v. Mississippi, 101 U. S. 814, 819; Douglas v. Kentucky, 168 U. S. 488, 497-99; Beer Co. v. Massachusetts, 97 U. S. 25, 32, 33; Mugler v. Kansas, 123 U. S. 623, 664, 665; Fertilizing Co. v. Hyde Park, 97 U. S. 659, 667; Butchers' Union Co. v. Crescent City Co., 111 U. S. 746, 750; Chicago, etc. R. R. v. Nebraska, 170 U. S. 57, 70, 74; Texas & N. O. R. R. v. Miller, 221 U. S. 408, 414; Atlantic Coast Line R. Co. v. Goldsboro, 232 U. S. 548, 558; Manigault v. Springs, 199 U. S. 473.

[12] Sproles v. Binford, 286 U. S. 374, 390; Stephenson v. Binford, 287 U. S. 251, 276; Henderson Co. v. Thompson, 300 U. S. 258, 266; Patterson v. Stanolind Co., 305 U. S. 376.

[13] Union Dry Goods Co. v. Georgia P. S. Corp., 248 U. S. 372; Midland Co. v. K. C. Power Co., 300 U. S. 109.

[14] Marcus Brown Co. v. Feldman, 256 U. S. 170; Levy Leasing Co. v. Siegel, 258 U. S. 242.

power.'"[15] We think of emergencies as suddenly arising and quickly passing. The emergency of the depression may have caused the 1932 legislation, but the weakness in the financial system brought to light by that emergency remains. If the legislature could enact the legislation as to withdrawals to protect the associations in that emergency, we see no reason why the new status should not continue. When the 1932 act was passed commercial and savings banks, insurance companies and building and loan associations were suffering heavy withdrawals. The liquid portion of their assets were being rapidly drained off by their customers, leaving the long term investments and depreciated assets as an inadequate source for payment of the remaining liabilities. An acceleration or a continuanee of this tendency to withdraw available funds threatened a quick end to the ability of the institutions to meet even normal demands. Such threatened insolvency demands legislation for its control in the same way that liquidation after insolvency does. Such legislation may be classed as emergency in one sense but it need not be temporary.[16]

This power of the state to protect its citizens by statutory enactments affecting contract rights, without a violation of the contract clause of the Constitution is analagous to the power often reserved to amend charters. Under this reserved power, it is held that the relations between a stockholder or certificate holder and the corporation may be varied without impairing the contract existing between the corporation and its stockholder or member[17] The contract rights considered in *Coombes* v. *Getz*[18] arose from a contract between a third party and the corporation. And the power reserved against the corporation and its members was deemed to be ineffective against a stranger to the reservation.

Appellant relies upon *Treigle* v. *Acme Homestead Association*[19] as a determinative precedent in support of his argument that the withdrawal arrangements between the association and appellant were contractual and secure from impairment by the statutory exercise of the paramount police power of the State. In that case

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15 Home Bldg. & L. Assn. *v.* Blaisdell, *supra*, 426.

16 Cf. W. B. Worthen Co. *v.* Thomas, 292 U. S. 426, 432.

17 Wright *v.* Minnesota Mutual Life Ins. Co., 193 U. S. 657, 663; Polk *v.* Mutual Reserve Fund, 207 U. S. 310, 325; Stockholders *v.* Sterling, 300 U. S. 175, 183.

18 285 U. S. 434.

19 297 U. S. 189.

statutory changes as to the right of withdrawal, similar to these involved here, had been made after the purchase of the shares. The enactment in the *Treigle* case occurred after notice of withdrawal. From all the circumstances of the Louisiana building and loan situation at the time of the legislation attacked in the *Treigle* case this Court reached the factual conclusion that the withdrawal amendment to the building and loan statutes was directed merely toward a private right and not deemed in the public interest.

It is to be noted that this Court was careful to point out in the *Treigle* case[20] that where the police power is exercised "for an end which is in fact public" contracts must yield to the accomplishment of that end.[21]

Certainly the protection of building and loan associations against the catastrophe of excessive withdrawal is, today, within legislative power.

Separate consideration of the objection to the legislation under the due process and equal protection clauses of the Fourteenth Amendment seems wholly unnecessary.

Affirmed.

Mr. Justice McREYNOLDS concurs in the result.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[20] *Id.*, 197.

[21] Cf. Indiana *ex rel.* Anderson v. Brand, 303 U. S. 95, 108.